

MCIWORLDCOM

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11 May, 2000

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: *Ex parte* in CC Docket No. 96-98

Dear Ms. Salas:

WorldCom, Inc. (formerly "MCI WorldCom") submits the following *ex parte* to address questions that have arisen over the last several weeks as the Commission has been considering a temporary rule designed to prevent interexchange carriers ("IXCs") from converting to unbundled network elements ("UNEs") their base of leased incumbent local exchange carrier ("ILEC") lines used to provide traditional special access services. Many of these issues were discussed on Wednesday, May 10, 2000, when Bradley Stillman and Alan Buzacott of WorldCom, and Mark Schneider of Jenner & Block, met with Dorothy Attwood, legal assistant to Chairman Kennard.

Today, about 80 percent of the special access lines leased by WorldCom are used to provide exclusively access services, and about twenty percent are used to provide exclusively local services. (A small percentage of lines are used to provide an integrated product that includes both local and non-local services.) WorldCom understands that the Commission is attempting to fashion a temporary rule that will prevent WorldCom (and other IXCs) from converting to UNEs the leased access lines used exclusively for special access, while at the same time allowing WorldCom (along with other IXCs and CLECs) to convert to UNEs those access lines used exclusively or significantly for the provision of local service.

In previous *ex partes* from Chuck Goldfarb to Larry Strickling, dated March 10, 2000 and April 4, 2000, WorldCom has explained that an ILEC proposal presented in an *ex parte* dated February 28, 2000, would effectively prevent WorldCom from converting any of its leased special access lines to UNEs, including those used exclusively or significantly for the provision of local services. Under all three options in the ILEC proposal, CLECs could not continue to multiplex leased DS-1s currently used for the provision of local service onto the DS-3 access services to which they are currently connected. As a result, the conversion into UNEs of special access lines used for the provision of local service would require CLECs to disconnect and reconnect their customers' service and also would require the CLECs to deploy separate networks for access and

local traffic, thereby discriminatorily denying CLECs access to the scale economies that ILECs enjoy from routing local and access traffic over the same facilities.

The ILECs have not disputed that this ban on what they call “commingling” will have this effect,¹ but they insist that it is necessary in any event to prevent WorldCom and other IXC and CLECs (1) from “gaming” the temporary rule and converting its entire base of access services to UNEs, and (2) from undermining the Commission’s decision not to unbundle certain elements. This is not the case. A simple provisional rule could directly address each of these concerns.

The ILECs also have proposed a definition of “a significant amount of local exchange service” that does not serve the Commission’s purpose in promulgating its temporary rule. Rather, the proposed ILEC definition effectively would keep CLECs from offering integrated products that provide the on-ramp to the Internet.

This *ex parte* responds to the ILECs’ meritless arguments.

Will “commingling” of unbundled network elements and access services on high-capacity transport facilities create a loophole that will allow IXCs to convert their base of leased access circuits to UNEs, undermining the Commission’s interim use restriction?

The ILECs insist that if IXCs are able to commingle UNEs and access services on high-capacity transport facilities, they will be able to avoid the Commission’s interim use restriction and convert their entire base of the loop or “channel termination” portion of special access circuits to unbundled loops, since there is no restriction on the use of unbundled loops. In other words, it is alleged that any commingling rule necessarily will allow IXCs to convert their entire base of channel terminations used to provide access services to unbundled loops and “commingle” them with leased access services that start at the customer’s serving wire center and extend to the IXC’s point of presence.

This argument is completely without merit. Even if the strategy described above were financially viable, and in most cases it is not,² the Commission could easily fashion a commingling

¹ Indeed, the ILECs’ “no commingling” policies have already had that effect, and will continue to prevent conversion of all leased access services until the Commission prohibits the practice. Despite repeated requests that ILECs convert DS-1 access services used to provide local exchange service to combinations of unbundled network elements, WorldCom continues to pay rates far in excess of economic cost for those circuits. The Commission’s UNE Remand Order and subsequent Supplemental Order permit the precise conversion that WorldCom has sought. Nonetheless, the ILECs have refused all conversion requests.

² The postulated scheme to avoid the use restriction by commingling unbundled loops with access transport services would be viable only if the savings from converting channel terminations to UNEs were greater than the associated costs from termination liability charges.

rule that would prevent IXC's from making such conversions, while at the same time allowing IXC's and CLEC's to convert to UNE's those access services used significantly for local services. The Commission simply needs to make clear as a provisional matter that its use restriction on combinations of loop and transport elements (when the two elements are not connected at a CLEC collocation site) applies with equal force to combinations of loop elements and transport services (when the two are not connected at a CLEC collocation site). Whatever authority the Commission has to restrict the use of combinations of unbundled loops and transport elements plainly also would permit a restriction on the use of commingled loops and transport services.³ Nor is there any risk that this UNE-access use restriction would limit in any way the ability of the so-called "data CLEC's" to provide services through leased elements or combinations of elements and services. Data CLEC's necessarily are collocated at the place where the copper portion of the loop terminates, and so are not affected in any way by a rule that imposes a use restriction on loop element-transport service combinations only when the two are not connected at a CLEC collocation site.

Does the commingling of loop and transport combinations with high-capacity transport services permit CLEC's to circumvent the Commission's ruling that they are not impaired without access to certain elements?

The Commission has determined that Bell Operating Companies ("BOCs") that wish to satisfy the obligations of section 271 and enter their in-region interLATA markets must offer checklist items as services even when those items correspond to elements that the Commission

Most of WorldCom's DS-1s are purchased under optional pricing plans. Those plans require the payment of substantial termination liabilities if WorldCom fails to meet the plans' commitment levels. In most situations, it would not be worthwhile for WorldCom to incur those liabilities unless it obtained the cost savings inherent in converting BOTH the loop AND the transport portions of existing DS-1s to unbundled network elements. The loop savings alone in most situations would not justify that conversion. In fact, the savings on transport mileage in most cases greatly exceed the savings from converting the channel termination to an unbundled loop.

³ Indeed, the Commission's authority to restrict the use of ILEC access services is likely to exceed its authority over the use of unbundled network elements. Since the Commission's authority over ILEC access services is not circumscribed by the provisions of Section 251, the Commission may permit or require restrictions on the use of those services, as long as those restrictions are not unjust or unreasonably discriminatory. Nor would there be any practical difficulty in imposing this use restriction. The Commission could simply permit the ILECs to file amendments to their interstate access tariffs. Those amendments would prohibit commingling of unbundled loops with transport services where the requesting carrier does not use the unbundled loop to provide a significant amount of local exchange service.

has declined to unbundle.⁴ The ILECs have argued that if commingling is allowed in the context of this rule, CLECs can circumvent the Commission's decision not to unbundle a particular element by "mixing and matching" combinations of UNEs with whatever tariffed service is required because the corresponding UNE has not been unbundled. Specifically, ILECs allege that now that switching in certain circumstances is no longer unbundled, CLECs can circumvent this ruling (and recreate the UNE platform) by commingling tariffed switching service with leased combinations of UNEs. By the same token, the ILECs insist, if the Commission allows commingling of unbundled loop and transport combinations with high-capacity transport services, then inevitably it will be forced to allow combinations of Section 251 UNEs with Section 271 services.

But a temporary rule permitting commingling in one narrow set of circumstances simply does not implicate the broader question the Commission has already acknowledged is raised by its ruling about the interrelationship between sections 251 and 271. Regardless of what the Commission decides with respect to commingling, it will some day have to determine whether Congress intended to require the BOCs to allow CLECs to combine one Section 271 service with other Section 271 services or with Section 251 UNEs. A temporary rule permitting commingling of UNE loops and loop/transport combinations with access services when the two lines are already connected, to allow simple conversion of lines used significantly for local service, will not preclude the Commission from reaching any conclusion it feels is appropriate to this broader policy question left open in the UNE Remand Order.

Indeed, the ILECs themselves have been strong advocates of CLECs commingling UNEs and ILECs services when it has served their purposes. For example, they have proposed that CLECs use ILEC OS/DA services along with UNEs to provide telecommunications services. The ILECs did not view such UNE-service commingling as inappropriate or as immediately creating a precedent for all potential UNE-service combinations.

The broader policy questions that will come into play when the Commission is called upon to further explore the relationship between sections 251 and 271 are not implicated in the least by permitting commingling as part of a temporary use restriction. Commingling in the context of a temporary loop/transport use restriction is necessary to permit WorldCom to convert its substantial base of DS-1s used to provide local services to unbundled loop and transport combinations. Without such commingling, any conversion would require thousands of disconnects and would result in the establishment of an inefficient, parallel transport network. WorldCom would suffer a significant decrease in utilization of existing multiplexing and transport facilities for no reason other than to protect ILEC revenues. There can be no justification for such discrimination.

⁴ In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Third Report and Order, released November 5, 1999, at paragraph 468.

Entirely different policies will be implicated when the Commission is called upon to evaluate the relationship between sections 271 and 251. At this time there has been no showing of a similar, compelling justification for requiring BOCs to combine one Section 271 service with other Section 271 services, or with Section 251 UNEs. Indeed, there is no record whatsoever upon which the Commission could make a determination on this issue. That decision can wait for a fuller record and another day, and will not be affected by a Commission rule that assures its contemplated use restriction does not unfairly and unnecessarily prevent the use of UNE combinations to provide local service.

Should the Commission allow conversion of “mixed” DS-1s that provide integrated products that are a combination of local exchange and other services?

The ILECs sought a temporary use restriction because, they asserted, it was necessary to prevent the “revenue shock” that would follow if IXC immediately converted their base of access customers to UNE service. While WorldCom consistently has disputed this premise (and the lawfulness of any use restriction), the Commission at least has consistently targeted just this base of true access service, intending to leave the CLECs free to convert to UNEs lines now leased from ILEC access tariffs to provide other services. The Commission’s rule accomplishes this purpose by making clear that only pure access service is meant to be covered by the use restriction; other uses of special access circuits, so long as they provide “a significant amount of local exchange service,” can be converted to UNEs.

Given the expressed purpose of the use restriction, the intent of the “significant amount of local exchange service” requirement is clear: it is designed to prevent CLECs from circumventing the use restriction on pure access lines by offering some minimal amount of local service to their access customers and claiming the right to provide the entire service through UNEs on the grounds that it carries local service as well. Consistent with this purpose, WorldCom submitted an *ex parte* on April 28, 2000 showing that a requirement that at least 25 percent of the active channels on a circuit be local is more than sufficient to keep CLECs from gaming the system in this manner. Accordingly, “significant local” should be construed to mean that at least 25 percent of the channels are used to carry local traffic.

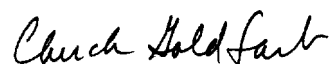
Throughout this proceeding, WorldCom has urged the Commission to allow conversion not only of circuits that provide exclusively local service, but also of circuits that provide integrated products, including local exchange, toll voice services, Internet access, other data services, and other voice services. The walls that separate these services are crumbling. Customers want a single pipe that provides all their services. The Commission should embrace what the market has already discovered and allow conversion of these integrated circuits. Conversion of these circuits does not implicate any policy concerns associated with the interim use restriction. But prohibiting such a conversion in effect places a barrier on the on-ramp to the Internet.

The ILECs, however, have seized upon the Commission’s “significant local” formulation

not as a way to keep CLECs from converting their access base, but as a way to stop CLECs from offering new and innovative services through combinations of unbundled elements. In their view, unless the CLEC has captured a significant percentage of a customer's local business, or unless the CLEC can show that it is carrying virtually exclusively local traffic, it should not be allowed to provide service through leased UNEs. In particular, some ILECs have argued that if the Commission were to allow commingling, it should allow it only if fully 100 percent of the traffic involved is local. Obviously, such a proposal has nothing at all to do with preserving ILEC revenue from traditional special access services, but instead is designed to prevent CLECs from using UNEs to provide a broad range of telecommunications services.

Conversion of integrated circuits would have no significant impact on these ILEC revenues. There are in fact relatively few of these circuits in the network at this time. The embedded circuit base consists largely of circuits used to provide a single service, e.g., local exchange or toll free. The conversion of existing integrated circuits would have only a negligible impact on ILEC special access revenues. The Commission should reject the ILECs' view that its "significant local" restriction should function to deprive customers of these new and innovative services the benefits of UNE pricing.

Sincerely,



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Director, Law and Public Policy

cc. Larry Strickling
Robert Atkinson
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Jordan Goldstein
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